United Nations AT/DEC/1106

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1106

Case No. 1209: IQBAL Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Spyridon Flogaitis; Ms. Brigitte Stern;

Whereas, on 7 July 2001, Khalid Iqbal, a former staff member of the United Nations, filed an Application containing pleas which read, in part, as follows:

"SECTION 2

Pleas:

1. I am contesting the Administrative decision ... to terminate me from service on the ground of post reductions. ... I am also contesting ... the recommendation of the Joint Appeals Board Geneva (JAB) ... and [the] Secretary General's acceptance of the said recommendations. ... the said administrative decision was illegal and ... the JAB failed to take cognisance of the illegality because according to the JAB my appeal was time-barred ...

2. I request the United Nations Administrative Tribunal ... to consider that I have adopted proper channels of recourse.

3. ... I request the ... [Administrative Tribunal] to rescind the said decision and order my retroactive reinstatement to the post that was illegally taken away from me ...

...

5. ... while working out compensation, if I were not retroactively reinstated, [the Applicant's hardship should] be given serious consideration. ...

6. ... the entire Administrative decision and steps that led to that decision were illegal.

..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 October 2001 and periodically thereafter until 14 June 2002;

Whereas the Respondent filed his Answer on 14 June 2002;

Whereas, on 12 August 2002, the Applicant filed Written Observations amending his pleas as follows:

"I. *The remedies sought by the Applicant*

1. Waiver of time limits ...

2. Reinstatement to my post ... or monetary compensation ..."

Whereas the facts in the case are as follows:

The Applicant joined the United Nations High Commissioner for Refugees (UNHCR) on a three months short-term appointment as an Administrative Assistant at the GL-6 level, in Quetta, Pakistan, on 1 March 1994. His short-term contract was extended twice and, effective 1 August 1994, he was granted a one-year fixed-term appointment. This appointment was extended several times, the last extension being for a two-year period, to expire on 31 July 1999.

On 16 September 1998, the Director, Division of Operational Support, informed UNHCR staff that, following the recommendations made by the Post Review Group and their adoption by the High Commissioner, seven posts in Pakistan field locations would be discontinued. For Quetta, the posts of Protection Assistant and Administrative Assistant were identified for discontinuation.

On 9 October 1998, a comparative review was conduced in order to determine which staff member would be separated as a result of the abolition of the post of Administrative Assistant. On 23 October, the Applicant was informed that, as a result of the comparative review, his fixed-term appointment would be terminated,

with effect from 31 October. He was further advised that he would receive compensation in lieu of notice and termination indemnity.

On 16 May 1999, the Applicant wrote to the UNHCR mediator, requesting her assistance in order to obtain retroactive reinstatement and challenging the legality of the comparative review. The mediator replied on 31 May, clarifying to the Applicant, inter alia, the issues and procedures regarding post discontinuation and comparative reviews and explaining that, unless the comparative review was procedurally flawed or tainted by improper considerations, there was no basis for re-examining the decision taken regarding the termination of his contract. She also pointed out to the Applicant that he was "out of time" to appeal under Chapter XI and that a request for waiver of time limits would have to be "soundly argued".

The Applicant continued to correspond with the mediator who, on 10 August 1999, advised him as to the procedures before the JAB, once again pointing out the issues of time-limit and insufficiency of the substance of his appeal.

On 11 September 1999, the Applicant requested administrative review of the decision to terminate his service due to abolition of post.

On 24 January 2000, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 16 March 2001. Its considerations, conclusions and recommendations read, in part, as follows:

"*Considerations*

...

59. ... the Panel could see the reasoning by the Appellant that he did not request the administrative review in the hope of gaining a reemployment which, according to the Appellant, was falsely promised by the administration. ... [however] his 'false hope' was dashed at the latest in April 1999. ...

60. ... the Panel noted that, during the internal mediation process, ... the Appellant was strongly reminded of the significance of the time factor by the mediator, already in May 1999. ... The Panel ... could not ascribe other than to the Appellant himself the responsibility of not immediately initiating the appeals process even at this stage.

61. The Panel ... concluded that, although the reasons put forward by the Appellant might have been understandable, they were not ... sufficient to have prevented him from requesting the administrative review in a much more timely manner ...

...

Conclusions and Recommendations

63. ... the Panel concludes that there are no exceptional circumstances warranting a waiver of the time-limit. In this connection, the appeal is time-barred and hence **not admissible**.

...

65. Consequently, the Panel makes no further recommendation to the Secretary-General in connection with the present appeal.

Special remark

66. Notwithstanding the conclusion reached in the present case, the Panel wishes to draw the attention of the Secretary-General on the time-limit granted Appellants in requesting an administrative review.

67. While the two-month period provided in Staff Rule 111.2 (a) may be sufficient for the preparation of the case, it may not provide sufficient time for the parties concerned to find an amicable and informal solution. That is why, as earlier proposed to the General Assembly in 1995, 'in order to enhance earlier reconciliation and resolution of disputes before they develop into formal litigation', the Panel wishes to recommend to the Secretary-General to re-examine the issue of the time-limit, keeping in mind the importance of informal mediation in the resolution of internal disputes."

On 17 April 2001, the Officer-in-Charge, Department of Management, transmitted a copy of the report to the Applicant and informed him that the Secretary-General accepted the JAB's conclusion and had decided to take no further action on his appeal.

On 7 July 2001, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The JAB erred when deciding that the Applicant did not present exceptional circumstances, warranting a waiver of the time limits.

2. The Applicant was mislead by UNHCR officials that he would be reinstated and, by the time he realized that he "was being cheated", he had missed the deadline for requesting administrative review. The Applicant was a victim of "a trap" that took away his "choice of appeal".

3. The Applicant attempted to resolve the matter via the UNHCR mediator: the Applicant requested administrative review only after exhausting this course of action.

4. The Post Review Group had identified a different post for discontinuation and the comparative review was not conducted in accordance with the UNHCR Staff Administrative Manual.

Whereas the Respondent's principal contentions are:

1. The Applicant failed to comply with the Staff Rules as regards timely filing of a request for administrative review. The appeal was thus time-barred.

2. A waiver of the time-limits was not justified.

The Tribunal, having deliberated from 2 to 21 July 2003, now pronounces the following Judgement:

I. The Applicant appeals the Secretary-General's decision, accepting the JAB's conclusion that the Applicant's appeal was time-barred. The Applicant claims that exceptional circumstances existed, warranting a waiver of the time limits as set forth in staff rule 111.2(a).

II. The Applicant was serving as an Administrative Assistant with UNHCR in Quetta, Pakistan, on a two-year fixed-term appointment, which took effect from 1 August 1997. On 23 October 1998, he was informed that his appointment would be terminated with effect from 31 October. The termination of the Applicant's appointment followed the adoption by the High Commissioner of the recommendations made by the Post Review Group, which had conducted a review of the posts in the Field in the context of operational requirements. With respect to the Quetta sub-office, the posts of Protection Assistant and Administrative Assistant had been identified for discontinuation.

On 9 October 1998, a comparative review was conducted to determine which staff member would be separated as a result of the abolition of the post of Administrative Assistant. The Applicant was subsequently informed that, as a consequence of this review, his fixed-term appointment would be terminated in accordance with staff regulation 9.1(b).

On 16 May 1999, the Applicant wrote to the UNHCR mediator, requesting her assistance *in obtaining his reinstatement while challenging the legality of the*

comparative review. The mediator responded, informing the Applicant, inter alia, that he might have missed the deadline for lodging an appeal with the JAB.

On 11 September 1999, the Applicant requested the Secretary-General to review the decision to terminate his service and, on 24 January 2000, the Applicant lodged his appeal with the JAB. The JAB concluded that the appeal was time-barred and the Secretary-General accepted this conclusion. This Application followed.

III. Staff rule 111.2(a) describes the first step required for a staff member to initiate an appeal process and provides, *inter alia*:

> "(a) A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing."

Staff rule 111.2(f) provides that:

> "(f) An appeal shall not be receivable unless the lime-limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal."

The Tribunal notes that the Applicant was advised of the decision to terminate his appointment on 23 October 1998. However, the Applicant did not request administrative review until 11 September 1999, approximately eleven months after the contested decision was conveyed to him.

The Applicant claims that exceptional circumstances existed, warranting the waiver of the time limits by the JAB, in accordance with staff rule 111.2(f). The Applicant contends that he did not submit a timely request for review since, based on assurances given by the Administration, he had hoped that he would gain reemployment within the Organization. Furthermore, the Applicant contends that he felt that it might have negatively affected his consideration for a new position.

The Tribunal has found no evidence in support of the Applicant's contention that he had been promised reemployment with the Organization. Furthermore, the Tribunal has recognized that "'exceptional circumstances' justifying waiver of the time limits must consist of events beyond the Applicant's control that prevent the Applicant from timely pursuing his or her appeal" (see Judgement No. 913, *Midaya*

(1999) referring to Judgements No. 372, *Kayigamba* (1986) and No. 713, *Piquilloud* (1995)). The circumstances described by the Applicant are, at best, subjective reasons upon which he had made the choice of not requesting administrative review within the prescribed time limits. They do not conform with the concept of "exceptional circumstances" as has been interpreted by the Tribunal throughout its jurisprudence, as recently stated in Judgement No. 1046, *Diaz de Wessely* (2002):

> "The delay in submitting the request is the result of a choice freely made by the Applicant, on the basis of her own assessment of the situation and her chances of making a successful appeal, and can in no way be attributed to exceptional circumstances beyond her control. The Applicant is solely responsible for the delay in submitting her appeal."

(See also Judgement No. 560, *Claxton* (1992).)

Moreover, the Tribunal notes that as far back as May 1999, the UNHCR mediator appraised the Applicant of his situation and explained to him that, in order for him to lodge a receivable appeal, he would have to address the problem of the delay in requesting administrative review. The Applicant chose to wait four more months before submitting his request. The Tribunal reaffirms that there can be no justification for a staff member who believes that he or she has been victimized, to delay pursuing the appropriate procedural recourse. (See Judgments No. 364, *Marazzi* (1986).)

In light of the above, the Tribunal finds that no "exceptional circumstances" exist in this case and that the JAB was right in determining so.

IV. In its jurisprudence, the Tribunal has consistently emphasized the importance of complying with the mandatory time limits as set out in the Staff Rules. (See Judgement No. 596, *Douville* (1993).)

In Judgment No. 498, *Zinna* (1990), the Tribunal held that

> "the various time-limits provided in the Staff Rules are to ensure that remedies are sought from contested administrative decisions in a timely and proper manner ..."

This rationale was reaffirmed in *Diaz de Wessely*, *ibid*, where the Tribunal stated:

> "In the Tribunal's view, it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations administration from tardy, unforeseeable requests that would otherwise hang like the sword of Damocles over the efficient operation of international organizations. Any other approach would endanger the mission of the international organizations, as the Tribunal has pointed out in the past: 'Unless such staff rules [on timeliness] are observed by the Tribunal, the Organization will have been deprived of an imperative protection against stale claims that is of vital importance to its proper functioning' (see Judgement No. 579, *Tarjouman* (1992), para. XVII))".

The Tribunal reiterates the importance it attaches to complying with procedural rules, as they are of utmost importance for ensuring the well functioning of the Organization.

V. Having found the Application to be time-barred, the Tribunal rejects the Application in its entirety.

(Signatures)

Mayer **Gabay**
Vice-President, presiding

Spyridon **Flogaitis**
Member

Brigitte **Stern**
Member

Geneva, 21 July 2003

Maritza **Struyvenberg**
Executive Secretary

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